

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

EX PARTE OR LATE FILED

Implementation of Local
Competition Provisions in
the Telecommunication Act
of 1996

MM Docket No. 96-98

DOCKET FILE COPY ORIGINAL

**RESPONSE TO INITIAL FLEXIBILITY ANALYSIS BY
BUILDING OWNERS AND MANAGERS ASSOCIATION INTERNATIONAL
NATIONAL REALTY COMMITTEE
NATIONAL MULTI-HOUSING COUNCIL
NATIONAL APARTMENT ASSOCIATION
INTERNATIONAL COUNCIL OF SHOPPING CENTERS
AND INSTITUTE OF REAL ESTATE MANAGEMENT**

The joint commenters submit this response to bring to the Commission's attention that any attempt to define access to rights-of-way in the manner suggested by AT&T, MFS Communications and NextLink Communications ("AT&T et al.") in their initial comments filed with respect to this Docket 96-98 last month, could adversely impact the property rights of thousands small building owners. For a more detailed discussion of the joint commenters' concerns with AT&T et al.'s comments see Reply Comments of BOMA et al. in Docket 96-98, filed June 3, 1996. To avoid an unduly broad interpretation of the proposed rule that would effect an unconstitutional taking of these small business' properties, the Commission should, as part of its regulatory flexibility analysis, carefully consider the comments

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submitted by the joint commenters with regard to Docket 95-184 and Docket 92-260 -- see Joint Regulatory Flexibility Analysis Comments of BOMA et al. in Docket 95-184 and Docket 92-260 ("Inside/Home Wiring RFA Comments"), which are incorporated by reference hereby and a copy of which is attached hereto.

It should be noted since the Inside/Home Wiring RFA Comments were filed, the Regulatory Flexibility Act, P.L. 95-354 (1981) was amended by the Debt Limit Act, P.L. 104-121, Title II of which is known as the Small Business Regulatory Enforcement Fairness Act of 1996. The Debt Limit Act was signed by the President on March 29th. Subtitle D of the Title II imposes specific requirements on the Commission with respect to its regulatory

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flexibility analyses. However, the substantive concerns expressed in those Inside/Home Wiring RFA Comments are equally pertinent to the regulatory flexibility analysis for this docket.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William R. Malone".

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June 6, 1996

Attachment:

Joint Regulatory Flexibility Analysis
Comments of BOMA, et al. in CS Docket 95-184 and MM Docket 92-260,
dated March 18, 1996

WAFB145422.1#07379-00002

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)

Telecommunications Services)
Inside Wiring)

Customer Premises Equipment)
_____)

CS Docket No. 95-184

In the Matter of)
)

Implementation of the Cable)
Television Consumer Protec-)
tion and Competition Act)
of 1992:)

Cable Home Wiring)
_____)

MM Docket No. 92-260

**JOINT REGULATORY FLEXIBILITY ANALYSIS COMMENTS OF
BUILDING OWNERS AND MANAGERS ASSOCIATION INTERNATIONAL
NATIONAL REALTY COMMITTEE
NATIONAL MULTI HOUSING COUNCIL
NATIONAL APARTMENT ASSOCIATION
INSTITUTE OF REAL ESTATE MANAGEMENT AND
NATIONAL ASSOCIATION OF HOME BUILDERS**

Introduction

The joint commenters, representing the owners and managers of multi-unit properties,¹ submit these comments in response to

¹ The joint commenters are the Building Owners and Managers Association International ("BOMA"), the National Realty Committee ("NRC"), the National Multi Housing Council ("NMHC"), the National Apartment Association ("NAA"); the Institute of Real Estate Management ("IREM"), and the National Association of Home Builders ("NAHB"). Founded in 1907, BOMA is a federation of 98 local associations representing 15,000 owners and managers of over six billion square feet of commercial properties in North America. NRC

the Initial Regulatory Flexibility Analyses contained in the Commission's Notice of Proposed Rulemaking in Docket No. 95-184 (the "Inside Wiring NPRM") and the Further Notice of Proposed Rulemaking in Docket No. 92-260 (the "Cable Home Wiring FNPRM").

Contrary to the statements regarding the potential effect on small entities found at ¶ 81 of the Inside Wiring NPRM and ¶ 51 of the Cable Home Wiring FNPRM, both proposals will have a "significant effect on a substantial number of small entities." 5 U.S.C. § 601 et seq.

I. THE PROPOSALS WILL HAVE A SIGNIFICANT EFFECT ON SMALL RESIDENTIAL AND COMMERCIAL BUILDING OPERATORS.

Our comments on the merits of the Commission's proposals discuss at length the effects those proposals will have on the real estate industry if adopted. We are very concerned about the ability of commercial and residential building owners and managers to effectively manage their properties under these proposals.

serves as Real Estate's Roundtable in Washington for national policy issues. NRC members are America's leading real estate owners, advisors, builders, investors, lenders, and managers. NMHC represents the interests of more than 600 of the nation's largest and most respected firms involved in the multi-family rental housing industry, including owners and managers of cooperatives and condominiums. NAA is the largest industry-wide, nonprofit trade association devoted solely to the needs of the apartment industry. The IREM represents property managers of multi-family residential office buildings, retail, industrial and homeowners association properties in the U.S. and Canada. NAHB is a trade association representing the nation's housing industry. NAHB's 185,000 member firms are involved in the development and construction of single family housing, the production and management of multi-family housing, and the construction and management of light commercial structures.

We will not repeat our concerns in detail, but in sum, the proposals will interfere with the ability of landlords to insure compliance with safety codes; provide for the safety of tenants, residents, and visitors; coordinate among tenants and service providers; and manage limited physical space.

These concerns are particularly important in the context of small businesses, which have limited staffs and resources to fulfill those functions. If service providers are granted free access to our members' buildings, small building operators will find themselves unable to keep up with the service providers' activities. They could find themselves exposed to liability for everything from code violations to damage to tenants' property, and never know who was actually responsible for the damage. The additional expense of meeting such claims could threaten the financial viability of many small building owners.

II. THE PROPOSALS WILL AFFECT A SUBSTANTIAL NUMBER OF SMALL ENTITIES.

There are a large number of small businesses in the rental real estate industry. Our members are primarily engaged in lines of business that fall under Standard Industrial Classification Codes 6512 (operators of nonresidential buildings); 6513 (operators of apartment buildings); and 6514 (operators of dwellings other than apartment buildings). The Small Business Administration defines a small entity in each of those SIC codes as one with less than \$5,000,000 in gross annual revenues. 13 C.F.R. § 121.601.

The 1992 Census of Financial, Insurance and Real Estate Industries published by the Bureau of the Census contains revenue and employment information regarding businesses in various SIC codes, tabulated in several different ways. Table 4 of the Establishment and Firm Size Report, "Revenue size of Firms: 1992," lists the number of firms, total revenue and other information for various SIC codes, including SIC codes 6512 and 6513.² The table also breaks the data down by size of firm, in terms of annual revenues.

The total number of firms for SIC Code 6512 that were operated for all of 1992 was 28,089; those entities earned total revenues of \$36,295,913,000. The number of firms that operated the entire year and earned revenues of less than \$5,000,000 was 26,960, and they reported earning a total of \$14,366,122,000. This is a very large number of businesses, and a significant amount of money. In fact, businesses earning under \$5,000,000 were 96% of all the businesses in this category, and accounted for 40% of all the revenue earned by operators of nonresidential buildings. This is clearly a substantial fraction.

An analysis of SIC code 6513 produces even more dramatic results. There were 39,903 firms in that category that earned less than \$5,000,000 in 1992, out of a total of 40,455. Thus, fully 99% of apartment building operators are small businesses.

² Table 4 lumps SIC Code 6514 together with several other categories, so we have not included that data. The figures as a whole, however, show that the size and annual revenues of firms break down similarly to the analysis shown below for SIC codes 6512 and 6513.

In addition, those firms accounted for \$21,267,875,000 out of total revenues of \$28,530,070,000, or 75% of the industry total.

In addition, BOMA conducted a survey of its members in 1995. Although not as accurate or comprehensive as the Census Bureau's figures, the BOMA survey corroborates the Census information. BOMA received 3,620 responses to that survey, and based on those responses 81% of commercial and residential building operators earn less than \$5,000,000 per year.

Based on the foregoing information, we believe it is inconceivable that the Commission's proposed rules will not have a significant effect on a substantial number of small businesses.

**III. THE COMMISSION SHOULD AMEND ITS FINDINGS AND
EXEMPT SMALL BUSINESSES FROM ANY FINAL RULES.**

In preparing its final regulatory flexibility analyses in both proceedings, the Commission should amend its initial findings to reflect the information provided above. We would also urge the Commission to review its proposals in light of this new information and revise them accordingly.

In particular, we urge the Commission to find specifically that the proposed rules will have a significant effect on a substantial number of small businesses. We also urge the Commission to exempt small businesses from the application of the rules, should it adopt final rules in either proceeding.

Conclusion

The proposals put forth by the Commission in the Inside Wire NPRM and the Cable Home Wiring FNPRM would both significantly affect a substantial number of small businesses. The Commission should so find and consequently exempt small businesses from any rule it might adopt.

Respectfully submitted,

/s/

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March 18, 1996

WAFB148988.1107379-00001